

530 *WHA*
 FILED
 MAR 17 2008
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name JOHNSON CHARLES
 (Last) (First) (Initial)

Prisoner Number BAU 433

Institutional Address GDS 5506TH ST OAKLAND, CA 94607

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

CHARLES JOHNSON
 (Enter the full name of plaintiff in this action.)

vs.

THE STATE OF
CALIFORNIA

(Enter the full name of respondent(s) or jailor in this action)

CV Case No. 08-1484
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

WHA
(PR)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

*1484
 WHA*

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Alameda County Superior Court OAKLAND

Court	Location
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- (b) Case number, if known 150 866

- (c) Date and terms of sentence 2/28/08 12 months

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No

Where?

Name of Institution: GLEN E. DYER Jail

Address: 550 6th ST, OAKLAND, CA 94607

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Alleged Violation of Parole Section 11351.5
OF Health & Safety Code AND 12021 OF THE PENAL CODE
No Violation Occured, charges dropped.

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐

Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☒ No ☐

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) charges dropped

5. If you went to trial, what kind of trial did you have? N/A

Jury ☐ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial? N/A Yes ☐ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐

(b) Preliminary hearing Yes ☒ No ☐

(c) Time of plea Yes ☐ No ☐

(d) Trial Yes ☐ No ☐

(e) Sentencing Yes ☐ No ☐

(f) Appeal Yes ☐ No ☐

(g) Other post-conviction proceeding Yes ☒ No ☐

8. Did you appeal your conviction? N/A Yes ☐ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☐ No ☐

Year: _____ Result: _____

Supreme Court of California Yes ☐ No ☐

Year: _____ Result: _____

Any other court Yes ☐ No ☐

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No _____

(c) Was there an opinion? Yes _____ No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)?
Yes _____ No _____

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes _____ No X

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: N/A

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

II. Name of Court: N/A

Type of Proceeding: _____

Grounds raised (Be brief but specific):

1 a. _____

2 b. _____

3 c. _____

4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: N/A

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____

10 b. _____

11 c. _____

12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: N/A

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No ☒

24 Name and location of court: N/A

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: My Right To Due Process Violated
6 by Probation Hearing with no prior notice.

7 Supporting Facts: Hearing was held on the day
8 I was to start trial with no prior
9 notice to call witnesses or prepare
10 in violation of Penal Code 90.22

11 Claim Two: Denied my right to disclose
12 evidence in Probation Hearing (Feb. 8)

13 Supporting Facts: No opportunity to disclose
14 exculpatory evidence in violation
15 of Penal Code 90.22.

16
17 Claim Three: Denied my Right to present witnesses
18 & cross examine adverse witnesses.

19 Supporting Facts: Denied opportunity to present
20 witnesses or cross examine adverse
21 witnesses in violation of Penal
22 Code 10.22. (see Attached Page)

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 CASE NEVER WENT TO TRIAL
26 ALL CHARGES WERE DISMISSED.

Page 6-B Continuation

CLAIM FOUR: Alleged Violation based on False Evidence.

Supporting Facts: Evidence presented had no link to probationer. Evidence was product of an illegal search and was evidently planted by Officer William Bergeron. Officer Bergeron has a lengthy history of this type of activity and was recently found guilty of the exact same activity in a civil case against him. Numerous other cases are pending against him for planting evidence. In addition, Officer Bergeron has a history of harassing the probationer. The Officer stated during the preliminary Hearing (dated Sept. 28, 2007) that he had been searching for Mr. Johnson 30 or 40 times in the last year. Mr. Johnson had committed no crime or violation during this time period and was in full compliance with the conditions of his probation and parole. This is documented on the Parole Report dated 9/20/07. The agent states no problems or positive drug test since March of 2007. Despite, Mr. Johnson exemplary behavior Officer Bergeron obviously displayed a vendetta against Mr. Johnson. This behavior has been on going for several years by Officer Bergeron.

Page 6-C Continuation

Claim Five: Probationer has conclusive proof of Innocence.

Supporting Facts: Probationer has a signed Affidavit from Tracy Parks dated Sept. 14 2007 the date after the arrest. Ms. Parks is the owner of the Oldsmobile that was the source of the alleged evidence against Mr. Johnson. She states that there was only 1 key to the vehicle which she left inside a white pickup truck in front of the Oldsmobile. The truck was unlocked and provided access to any one who opened the door. She also states that she was never asked by Officer Bengerson for permission to search the vehicle even though she was home and subsequently realized that the officer was searching the car. She states that she had not seen Mr. Johnson for over one year.

Officer Bengerson obviously obtained the key to the Oldsmobile at its location and not from Mr. Johnson and switched keys in order to link the car to Mr. Johnson. Mr. Johnson intends to file a civil action and complaint against Officer Bengerson and the City of Oakland based on Officer Bengerson's illegal actions.

Page 6 D Continuation

Claim Six: Probation was improperly
Revoked.

Supporting Facts: Probation did not
violate any condition of Probation,
was not allowed to present witnesses or
evidence, was not notified in advance
or allowed to prepare for a Revocation hearing,
was not allowed to confront and cross-
examine adverse witnesses, did not receive
written notice of reasons and evidence
from the Fact Finder, was the subject of
harassment and illegally planted evidence,
and receive a sentence of 5 years
based on these conditions. Probation
is therefore being held illegally in
violation of his constitutional rights
to due process, protection against illegal
search and seizure and seeks immediate
relief.

Page 6 E continuation

Claim Seven: Ineffective Assistance of Counsel

Supporting Facts: Mr. Johnson requested substitution of counsel and was denied during the pretrial phase. Mr. Johnson's request was based on a total lack of communication with counsel and total loss of faith in counsel's ability to represent him adequately. Mr. Johnson came to this conclusion based on several factors. First, counsel missed deadlines to file trial motions claiming ignorance of the court deadline, thereby denying him of a viable defense. Secondly, counsel failed to pursue and investigate an aggressive and obvious defense involving Officer Bergeron's activities. This was despite the fact that Officer Bergeron's trial regarding planting evidence in a similar case was common knowledge and front page news in Oakland. Thirdly, counsel claimed ignorance of the probation hearing for Mr. Johnson and failed to advise him in advance or prepare for said hearing since it has a different standard of evidence than a criminal trial. Mr. Johnson felt completely unrepresented by denial of his motion and totally unable to communicate with counsel.

Relevant Case Citations

Pg. 7

1. *People v. Dickens* (1972) 8 Cal 3d 451, 105
2. *Gagnon v. Scarpelli* 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.
3. *People v. Rodriguez*, 51 Cal. 3d 437, 272 Cal. Rptr. 613, 795
4. *People v. Winson*, 29 Cal 3d 711, 175 Cal. Rptr. 621, 631 P.2d 55
5. *Black v. Romano*, 471 U.S. 606, 105 S.Ct. 2254, 85 L. Ed 2d
6. *People v. Mosley*, 198 Cal. App 3d 1167, 244 Cal. Rptr. 264
7. *People v. Hryko*, 7 Cal. App. 3d 604, 609, 86 Cal. Rptr. 726
8. *US. v. Corbitt*, C.A. 3d, 1976, 541 F.2d. 146
9. *Smith v. U.S.*, CA D.C. 1965, 353 F. 2d. 838, 845
10. *McKee v. Harris*, CA 2d 1981, 649 F. 2d. 927
11. *Bodd v. Nixon* (1971) 6 Cal 3d 195, 200, 98 Cal Rptr. 849
12. *Smith v. Lewis* (1975) 13 Cal. 3d 349, 356 118 Cal Rptr. 621
13. *Shelly v. Hansen* (1966) 244 Cal app. 2d 210, 214-215, 53

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

In re Wagoner (2005) 127 Cal App 4th 138, 25
People v. Smith (1970) 12 Cal App 3d 621, 626, 90
Morrissey v. Brewer (1972) 408 US 471, 92 S. Ct 2593

Do you have an attorney for this petition? Yes _____ No X

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on 3/4/08

Date

Charles Johnson

Signature of Petitioner

(Rev. 6/02)

JS 44 - CAND (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS*Charles Johnson*

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF ALAMEDA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
N/A

DEFENDANTS*STATE OF CALIFORNIA*

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT ALAMEDA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding
☐ Removed from State Court
☐ Remanded from Appellate Court
☐ Reinstated or Reopened
☐ Transferred from Another district (specify)
☐ Multidistrict Litigation
☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 168 Stockholders Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HRA (1396ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 960 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	PRISONER PETITIONS <input checked="" type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

WRIT OF HABEAS CORPUS, I WAS DENIED DUE PROCESS AND I AM BEING HELD IN VIOLATION OF MY 6TH & 14TH AMENDMENT RIGHTS.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD